

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

AMOS L. HOSEY, SR.,
TDCJ-CID # 428519,

Petitioner,

v.

DOUG DRETKE,

Respondent.

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CIVIL ACTION NO. V-05-116

MEMORANDUM OPINION AND ORDER

Amos L. Hosey, Sr., a prisoner of the Texas Department of Criminal Justice - Correctional Institutions Division, has filed numerous prison related suits and has been sanctioned for his abuse of the legal system. *See e.g. Hosey v. Kelly*, No. V-00-03 (S.D. Tex. Dec. 31, 2002). In addition, the Clerk has been instructed not to accept any other civil actions, whether they are civil rights complaints or habeas corpus petitions, without advance payment from Hosey. *Id.*

In the present action, Hosey has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a state court conviction for attempted capital murder. *State v. Hosey*, No. 86-5-2397 (24th Dist. Ct., Refugio County, Tex. Aug. 7, 1986). He has filed at least two section 2254 habeas petitions challenging the same conviction. *See Hosey v. Johnson*, No. V-98-04 (S.D. Tex. Mar. 26, 1999); *Hosey v. Scott*, No. V-91-021 (S.D. Tex. Nov. 10, 1994). The court dismissed No. V-98-04 because it was a successive petition which had been filed without obtaining prior authorization from the United States Court of Appeals for the Fifth Circuit as required by 28 U.S.C. § 2244(b)(3)(A). The present petition was also filed without the Fifth Circuit's approval. Consequently, this court lacks jurisdiction to consider Hosey's habeas petition and the petition is

subject to dismissal without any need to seek a response from Hosey's custodian. *Torres v. Senkowski*, 316 F.3d 147, 152 (2nd Cir. 2003); *Hooker v. Sivley*, 187 F.3d 680, 681-82 (5th Cir. 1999).

In addition, Hosey's petition includes claims regarding his conditions of confinement which can only be presented in a civil rights complaint under 42 U.S.C. § 1983. *See Patton v. Jefferson Correctional Center*, 136 F.3d 458, 463-64 (5th Cir. 1998), *citing Cook v. Texas Dep't of Criminal Justice Transitional Planning Dep't*, 37 F.3d 166, 168 (5th Cir. 1994). As stated above, Hosey has filed many prisoner suits. *See Hosey v. Scott*, No. H-00-4524 (S.D. Jan. 11, 2001) (noting that Hosey has filed over forty *in forma pauperis* prisoner complaints in the federal district courts of Texas). Hosey has often refused to follow court orders, and the courts have dismissed his cases on many occasions due to his noncompliance. *Id.* More than three of Hosey's civil rights complaints have been dismissed as frivolous, and he is barred from filing any new actions as a pauper unless he is in imminent danger of physical harm. *Id.*, *citing* 28 U.S.C. § 1915(g).

Hosey's pleadings in the present action concern allegations of theft, denial of parole, denial of a shaving pass, disciplinary actions, and racial discrimination. There is no indication that Hosey faces any threat of injury. Hosey has previously attempted to file a civil rights complaint as a habeas petition and has been admonished not to do so. *Hosey v. Johnson*, No. V-98-88 (S.D. Tex. Jul. 29, 1999). The present action is another attempt to circumvent the federal courts' orders, and it is obvious that Hosey is ignoring the courts' admonitions. This action must be immediately dismissed in light of Hosey's continued efforts to file pleadings which are clearly baseless after having been warned by the courts not to do so. *Moody v. Baker*, 857 F.2d 256, 258 (5th Cir. 1988); *Gabel v. Lynaugh*, 835 F.2d 124, 125 (5th Cir. 1988). In addition, sanctions will be imposed to deter Hosey and others like him from abusing the court system. *Id.*

Hosey has filed a motion using a court issued application to proceed *in forma pauperis*. The application has been modified to include a request to for a temporary restraining order. Hosey is barred from proceeding as a pauper due to his history of frivolous litigation. Moreover, there are no facts alleged in the motion which would warrant a temporary restraining order. *Sierra Club v. City of San Antonio*, 112 F.3d 789, 793 (5th Cir. 1997). The motions will be **DENIED**.

Conclusion

The court **ORDERS** the following:

1. This civil action filed by Amos L. Hosey, TDCJ-ID # 428519, is **DISMISSED** without prejudice.
2. Hosey's Motion to Proceed *in forma pauperis* (Docket Entry No. 2) and his Motion for Temporary Restraining Order (Docket Entry No. 3) are **DENIED**.
3. Hosey is **ASSESSED** a sanction of Three Hundred Dollars (\$ 300.00) because he has disregarded the court's admonishments regarding frivolous lawsuits.
4. The TDCJ-CID Inmate Trust Fund is **ORDERED** to place a hold on Hosey's prisoner account until at least \$ 300.00 has accumulated in the account. At that time, the Inmate Trust Fund shall withdraw \$ 300.00 from the account and forward the funds to the Clerk of this court.
5. The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties; the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax Number (512) 936-2159; the TDCJ-CID Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax number (936) 437-4793; and Betty Parker, United States District Court, Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702.

SIGNED on this 8th day of December, 2005.


JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE